



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/544,282	08/07/2006	Vijay Kamalakant Gadkari	60300-USA	9940
Paul A Fair FMC Corporation Patent Administrator 1735 Market Street Philadelphia, PA 19103				
7590 12/07/2010				
EXAMINER MAEWALL, SNIGDHA				
ART UNIT		PAPER NUMBER		
1612				
MAIL DATE		DELIVERY MODE		
12/07/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/544,282

Applicant(s)

GADKARI ET AL.

Examiner

Snigdha Maewall

Art Unit

1612

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 16 November 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1,3,4,6-8,10 and 22.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Snigdha Maewall/
Examiner, Art Unit 1612

/Gollamudi S. Kishore/
Primary Examiner, AU 1612

Continuation of 11, does NOT place the application in condition for allowance because: Applicant argues that the limitations of claims 5 and 9 were present earlier so it is not clear how the rejection became final necessitated by claim amendments. In response to this assertion, it is pointed out that claim 1 earlier had no limitations of microcrystalline cellulose being colloidal or non colloidal and there were no limitations of viscosity, thus scope of claim 1 was changed and hence the new limitations along with old limitations had to be searched for claim 1 as such the rejection was final.

Applicant argues that there is no disclosure or suggestion in the combination of references that one could obtain a stable high water toothpaste with a reasonable expectation of success: (1) containing both a silica abrasive in an amount less than 15% and a silica thickener in an amount of 1 to 7%; (2) containing MCC to assist in reducing abrasivity; and (3) having a viscosity in an amount less than 200,000 cP. Indeed, Niemi specifically teaches that the stability of high water toothpaste systems is unpredictable and further teaches away from the present invention. Applicants' arguments are not persuasive because first no such limitations are present in claim 1 which recites that MCC assist in reducing abrasivity, the claims only recite presence of MCC. Niemi also uses rheology modifiers such as xanthan CMC etc to provide cohesion to the composition. Niemi also discloses and provides suggestion that additives, materials and adjuvants can be added to the dentifrice in column 6, lines 40-50. Niemi does teach that viscosity should be greater than 200,000cP, however, in light of teachings of Masters, one would utilize MCC with less viscosity and for reduced abrasivity since the reference teaches that silica with MCC provides less abrasiveness and in light of Venables, one would envisage using colloidal MCC for providing stable suspension and would expect better texture due to addition of MCC (colloidal). In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Applicant contends that there is nothing in the remaining references teaches or suggests that the presently claimed high water toothpaste composition having a viscosity less than 200,000 cP could be stable (and have reduced abrasivity), these arguments are not persuasive because first, no such limitations are recited in claims and additionally as discussed in the rejection and above, Masters provide motivation to use MCC with silica for reduced (stringiness)abrasivity, since Niemi's composition comprises abrasive silica, addition of colloidal MCC would provide less stringiness properties to the formulation and also better rheology which makes it stable as taught by Venables. Applicant argues on pages 3 to 4 and quotes col. 1, lines 44-58 of Niemi that it teaches away from using high water because it impacts stability and solves problem by increasing viscosity and thus teaches away from instant invention. These arguments are not persuasive because the rejection is not just based on Niemi's reference, it is the combined teachings of all the references which teaches the scope of the claimed limitation. Rheology modifiers are known in the art, Venables uses MCC to provide stability and good texture, Masters uses MCC to reduce stringiness of dentifrice and since MCC is known in the art as gelling agent, suspension stabilizer and texturizer, one would envisage using it and would expect less abrasive due to modified texture and increases stability as per Venables teachings. Applicant argues that examples 16, 17 and 18 provide unexpected stable tooth paste composition with reduced abrasivity. Applicants arguments are not persuasive because the unexpected results do not commensurate with scope of the claims. The examples have specific thickener and abrasive in specific amount and with specific viscosity parameters, where as the claims contain broader disclosure for which unexpected results have not been provided. Applicants have not provided comparative results between instant invention and closest prior art to show superior and unexpected results. Applicants have not provided stability data or abrasivity data to show unexpected results. The rejections will be maintained.